IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8659 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MMTC LTD.

Versus

STATE OF GUJARAT

Appearance:

NANAVATI ASSOCIATES for Petitioners

NOTICE SERVED BY DS for Respondent No. 1

MR PC KAVINA for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/08/2000

ORAL JUDGEMENT

Rule. Mr.K.T.Dave, learned Asst.Govt.Pleader waives service of rule on behalf of respondent No.1. Mr.Hathi waives service of rule for respondents No.2 to 4

and Mr.P.C.Kavina waives service of rule for respondent No.5. With the consent of the learned counsel, the petition is taken up for final disposal today.

2. The petitioner-MMTC is a Government of India undertaking which has imported thermal coal through vessel M.V.Sunrise-1 at Sikka Jetty . The coal is being imported by the petitioner for supplying the same to the Thermal Power Station of Gujarat Electricity Board at Wanakbori. After the coal is being unloaded from the ship it is being stocked in the stockyard of Shree Digvijay Cement Co.Ltd. The grievance in the present petition is that although the petitioner is not liable to pay any octroi on the disputed coal, the respondent No.4-Gram Panchayat and the respondent No.5-Ijaradar appointed by the respondent No.4-Gram Panchayat are levying and demanding the octroi on the disputed cargo.

3. In response to the notice issued by the Court, Mr.K.T.Dave, appears for respondent No.1, Mr.P.V.Hathi, learned counsel appears for respondent Nos 3 and 4 and Mr.Kavina appears for respondent No.5-Ijaradar. The contention of respondent Nos 2 to 5 is that since the petitioner is importing coal within the octroi limits of the Gram Panchayat it is liable to pay the octroi and that if at all it proposes to export coal outside the octroi limits it may invoke the provisions of Rule 32 of Gujarat Gram Panchayat & Nagar Panchayats Taxes & Fees Rules, 1964, relevant portion of which reads as under:

> "32. Refund of octroi when allowed:--An importer of goods on which octroi has been paid shall be entitled to a refund of the amount so paid on export thereof from the octroi limits, if the goods have not been used, consumed or sold within these limits".

Mr.Hathi, learned counsel for the District Development Officer further submits that the petitioner also has equally efficacious alternative remedy of preferring appeal before the District Panchayat under the Gujarat Panchayats Act, 1993.

4. Mr.K.S.Nanavaty, learned counsel for the petitioner relies on the contract, dated 15.4.2000 read with corrigendum dated 18th July, 2000 between the Gujarat Electricity Board and the petitioner wherein it is mentioned that the petitioner is required to supply 1,30,000 MTs (plus or minus 10%) imported coal to Wanakbori Thermal Power Station of the Gujarat

Electricity Board. It is submitted that the coal is not going to be used or consumed within the local limits of the respondent No.4-Gram Panchayat, and therefore, the octroi is not leviable. Strong reliance is placed on the decision of the Apex Court in the matter of Entry Tax Officer, Bangalore vs Chandanmal Champalal & Co, 1994(4) SCC 463, Tata Engineering & Locomotive Co.Ltd vs Municipal Corporation, Thane, AIR 1992 SC 645 and Mafatlal Industries Ltd vs Nadiad Nagarpalika and another, AIR 2000 SC 1223. Strong reliance is also placed on the judgment of this Court dated 30.12.1997 in Appeal From Order No.416/97.

Further, Mr Nanavaty has relied on the provisions of Rule 36 of the Rules which reads as under:

"36. Exemption from octroi:--(1) The following articles shall be exempted from payment of octroi:

(a) All Government stores or stores of local authorities, and all items of stores of Gujarat Electricity Board meant for use in rural electrification for generation, distribution, supply of energy."

(emphasis supplied)

5. Mr.Nanavaty further states that a responsible officer of the petitioner-Company will also file undertaking that the coal imported from the aforesaid vessel and being stored in the stockyard at Digvijay Cement Co.is not going to be used or consumed within the octroi limits of Divvijay Gram Panchayat and will not be supplied to any other party other than the Gujarat Electricity Board.

6. Having heard the learned counsel for parties, and having considered the provisions of Rule 36 of Gujarat Gram & Nagar Panchayats Taxes & Fees Rules, 1964 which continue to be applicable after the enactment of Gujarat Panchayats Act, 1993 as well, and in view of the contract dated 15.4.2000 read with corrigendum dated 18.7.2000 from the Gujarat Electricity Board to the petitioner Company for supplying 1,30,000 Mt imported coal at its Wanakbori Thermal Power Station, it is apparent that the coal which is being unloaded by the petitioner-Company from Vessel M.V.Sunrise -1 and being stocked in stockyard of Shri Digvijay Cement Co.Ltd within the octroi limits of respondent No.4-Gram Panchayat is not exigible to octroi upto the quantity of 1.3 lacs Mts +/ - 10%. In

the first place, Rule 36 makes it clear that all items of stores of GEB meant for use at its power station are exempted from octroi. Imported coal in question is purchased by the Gujarat Electricity Board for its Thermal Power Station at Wanakbori. Hence, Rule 36 is clearly applicable. The details of quantity of coal unloaded from vessel MV Sunrisei-1 at Sikka jetty and stored in the stockyard at Digvijay Cement Company till 13.8.2000 as per letter dated 13.8.2000 is 55885.900 MT. Mr.Nanavaty further submits that the exact quantity which has been brought by the vessel MV Sunrise-1 is 1,35,216 MTs which is within the permissible margin limit of 10+/as mentioned in the certificate given by the Gujarat Electricity Board.

7. In view of the above discussion, the petition is allowed. The respondents are directed to permit the petitioner to import 1,35,216 MTs of coal through vessel MV Sunrise-1 including 55885.900 MTs already brought in Digvijay Gram referred to in the letter, dated 13.8.2000 within the octroi limits of Digvijay Gram Panchayat without payment of any octroi subject to the following conditions:

(i) A responsible officer (not below the rank of General Manager of Gujarat region) of the petitioner-Company shall file undertaking within one week from today to the effect that quantity of 1,35,216 MTs imported through vessel Sunrise-1 at Sikka jetty is only for the purpose of supplying the same to the Gujarat Electricity Board at its Thermal Power Station at Wanakbori and that the same shall not be supplied to any other party and that no part of the cargo shall be supplied to any other party and that the said cargo shall not be used or consumed within the limits of Digvijay Gram Panchayat.

8. Since the petition is allowed in the aforesaid terms, it is not necessary to go into any other contention raised in the petition.

9. Rule is made absolute in terms of above directions. No costs.

14.8.2000 (M.S.SHAH, J)